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**OFFICE OF THE
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November 18, 1997 Ralph E. Gonzales (202) 219-4152

FACT SHEET ON INDIAN TRIBAL TRUST FUNDS

How is the Administration addressing the Department's management of Tribal trust funds?

The Administration is pursuing a three-pronged strategy to address issues related to the Department of the Interior's administration and management of Indian trust funds. First, it is proposing a legislative approach that utilizes informal dispute resolution mechanisms to address claims that Tribes may have with regard to the Department's past management of Tribal trust fund accounts. Second, in conjunction with the Special Trustee for American Indians, the Department has developed recommendations for improving the underlying trust management and accounting systems, and is in the process of implementing those improvements. With Congressional support, the goal is to install new systems nationwide within three years. Third, the Department has proposed legislation to end the increasing fractionation of ownership of Indian allotted lands. This fractionation of interests not only undermines the economic vitality of allottee-owned land, but it also severely complicates the government's management of trust assets and resources.

What is the scope of the Department's Tribal trust fund management responsibilities?

The Secretary of the Interior, through the Office of the Special Trustee (OST), maintains approximately 1,500 accounts for 338 Tribal entities with assets in excess of \$2.5 billion. Each year, more than \$802 million passes through the Tribal trust funds system. Although not the focus of the recommendations to Congress, the OST also maintains over 300,000 individual Indian money (IIM) trust fund accounts through which over \$300 million pass each year.

How will claims relating to the IIM trust fund accounts be resolved?

The IIM accounts are currently the subject of a class action lawsuit brought by IIM account holders against the United States, Cobell v. Babbitt, 1:96CV01285 RCL (D.D.C.). The parties are working diligently to define a process by which those individual claims pertaining to IIM accounts will be examined and adjudicated.

How were the Tribal accounts reconciled and what were the findings?

The Tribal Reconciliation Project (the "Project") was undertaken by Arthur Andersen LLP, ("Arthur Andersen") under the supervision of the Department. The basic reconciliation procedures of the Project

encompassed the reconstruction of \$17.7 billion in non-investment transactions, of which \$15.3 billion -- about 86 percent -- were reconciled. For the reconciled transactions, approximately \$1.87 million in transactions were in error -- an error rate of .01 percent. The remaining 14 percent of transactions (\$2.4 billion) were deemed to be "unreconciled," meaning that the Department could not locate all source documents required under the Project procedures to verify the accuracy of the general ledger entry for the transactions within the time frame allotted to the reconciliation process. After completion of the project, the Department, employing the services of an independent accounting firm, Chavarria, Dunne & Lamey LLC, continued to reconcile previously unreconciled disbursement transactions. As a result, the value of unreconciled transactions has decreased from \$2.4 billion to \$1.97 billion dollars.

Does this mean that the government has lost \$1.97 billion of Tribal funds?

No, it does not mean that the \$1.97 billion is lost or missing. However, it indicates that the poor condition of the records and systems did not allow the federal government to conduct a complete audit or provide the level of assurance to account holders that was expected. The results of the Project are described in more detail in the Department's report and in the earlier reports submitted in May and December 1996.

What are the objectives of the settlement process being proposed by the Department?

The objectives of the settlement process are to:

acknowledge and respect Tribal sovereignty;

achieve a settlement that is fair to both the Indian community and the general public;

achieve the most resource-efficient settlement of claims (in terms of conserving federal government and Tribal time, money, and staff, including attorneys' and expert witness fees);

encourage settlement by providing incentives to settle and disincentives to litigate;

use the most informal settlement processes available rather than litigation to encourage Tribal participation;

obtain funding for the settlement without reducing appropriations for the OST and BIA budgets and Tribal programs; and

achieve agreement on account balances through September 30, 1992, or the date of settlement, as an agreed-upon starting point for the future.

How was the settlement proposal developed?

In December 1996, the Department submitted settlement options to Congress. At the time of submission, the Department promised to consult with Indian tribes on the various options and provide specific recommendations, based on that consultation process, to Congress. This report contains significant new approaches to settlement based on those consultations.

What are the elements of the proposed settlement?

The Department's proposal is designed to provide an opportunity for Tribes to settle all of their Tribal trust fund accounting claims with the government for the period July 1, 1972 through September 30,

1992, and potentially through the date of settlement. The government would report to Tribes all known errors, and would credit Tribes' accounts in the amount of those known errors due Tribes on a net basis, with compound interest, as soon as possible after the results of the additional reconciliation work have been presented to the Tribes for their review and consideration, and funds are appropriated. The government would credit known errors up front, whether or not a Tribe accepts the government's settlement offer for any other claims.

After crediting the known error amounts to Tribes' accounts, the proposal entails a two-stage settlement opportunity for resolving other accounting claims. In stage one, the government would offer each Tribe the opportunity to settle claims immediately for a specific sum based on a formula that takes into account the particular characteristics of the Tribe's accounts. If the Tribe accepts the offer, the settlement would be paid according to the formula and all covered claims against the government would be extinguished. If the Tribe does not accept the offer, it would be withdrawn and stage one would be concluded.

In stage two, Tribes would have the opportunity to engage in government-to-government settlement negotiations with a mediator. The mediation process would be non-binding. As part of this process, there would be a limited opportunity to obtain additional data or undertake additional analysis to the extent it would be constructive in reaching a satisfactory resolution of claims. This aspect of the proposal is a fundamental change from the December report, and is designed to respond to the requests of the Tribes to respect the sovereignty and individual circumstances of each Tribe in settling their claims. If the mediation process does not successfully resolve the Tribe's claims against the government, a Tribe could file a claim in the U.S. Court of Federal Claims.

What is the next step in the settlement process?

The proposal envisions the enactment of legislation to authorize the Department to undertake the settlement process outlined in the Department's report. The Department looks forward to working with Congress on this legislation.